



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Disestablishment of Restricted Area; Rhode Island Sound off Newport, Rhode Island

AGENCY: U.S. Army Corps of Engineers, DoD

ACTION: Proposed rule.

SUMMARY: The U.S. Navy requested that the U.S. Army Corps of Engineers (Corps) disestablish the naval restricted area located in the waters of Rhode Island Sound, 4 nautical miles due south of Lands End in Newport, Rhode Island. The restricted area was established on August 31, 1987. The purpose of the restricted area was to establish a practice minefield and conduct mine detection and mine sweeping exercises. As a result of the discontinued use of this area by Naval Station Newport, the Navy has requested the restricted area be disestablished.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2012-0001, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number COE-2012-0001 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2012-0001. All comments received will be included in the public docket without change and may be made available on-line at <http://regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although

listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or Ms. Angela C. Repella, U.S. Army Corps of Engineers, New England District, at 978-318-8639.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to disestablish a restricted area that is no longer needed by Naval Station Newport, because use of the practice minefield and conducting mine detection and mine sweeping exercises in that area has been discontinued.

The Corps authority to disestablish this restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3).

Background

By letter received on May 5, 2011, the Commander of Naval Station Newport has requested the removal of the restricted area in Rhode Island Sound, 4 nautical miles due south of Lands End in Newport, Rhode Island. The request was made due to the discontinued use of the restricted area. In response to this request by the U.S. Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat

266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is proposing to amend the regulations in 33 CFR Part 334 by removing §334.78 to disestablish the restricted area.

Procedural Requirements

a. Review Under Executive Order 12866. This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act. This proposed rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the amendment of this restricted area would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act. Due to the administrative nature of this action, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District

office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act . The proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate, and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR, Part 334

Danger Zones, Navigation (water), Restricted Areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

§ 334.78 [Removed]

2. Remove § 334.78.

Dated: March 29, 2012

Approved: _____

Richard C. Lockwood

Chief, Operations and Regulatory

Directorate of Civil Works

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